

**HPM&B**  
ATTORNEYS AT LAW

99 PARK AVENUE NEW YORK, NY 10016-1601  
TEL: 212-286-8585 FAX: 212-490-8966  
WWW.HPMB.COM

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Paul Stuart Haberman  
Associate  
phaberman@hpmb.com

**MEMO ENDORSED**

July 21, 2008

VIA FACSIMILE- 212-805-7949

Honorable P. Kevin Castel  
United States District Judge  
United States Courthouse  
Southern District of New York  
500 Pearl Street, Room 2260  
New York, New York 10007

Re: Benjamin W. Mitchell v. Prison Health Services, Inc., et al.  
07 CV 08268 (PKC-FM)

Your Honor:

This office is trial counsel to the New York City Law Department in the above-referenced *pro se* matter. Please be advised that, pursuant to your endorsed letter dated June 18, 2008 in the above-referenced matter, my office filed a pre-answer motion to dismiss by ECF this past Friday, July 18, 2008, and served a copy of same upon Plaintiff and Your chambers. However, I received an ECF e-mail this morning advising me to re-file the document manually, because of a "Non-ECF case error."

Attached, therefore, please find a copy of the electronic docket sheet, which reflects my office's attempts to timely file this motion, as well as an affidavit of service as to Plaintiff. We respectfully request that the filing of the pre-answer motion to dismiss be deemed timely by this Court and will make all efforts to properly file this motion with the Southern District of New York today. Thank you in advance for your understanding in this matter.

*Motion may be  
filed and will be  
deemed timely.  
SO ORDERED  
JSD  
7-21-08*

HEIDELL, PITTONI, MURPHY & BACH, LLP

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CONNECTICUT:  
30 OAK STREET  
STAMFORD, CT 06905  
TEL: 203-327-1800  
FAX: 203-353-1892

LONG ISLAND:  
310 OLD COUNTRY ROAD  
GARDEN CITY, NY 11530  
TEL: 516-294-7134  
FAX: 516-294-7139

WESTCHESTER:  
81 MAIN STREET  
WHITE PLAINS, NY 10601  
TEL: 914-539-3100  
FAX: 914-949-1160

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Respectfully Submitted,

HEIDELL, PITTONI, MURPHY & BACH

By: 

PAUL STUART HABERMAN (PH 2771)

PSH/is  
Attachments

cc: **BY CERTIFIED MAIL (Without enclosures)**

Mr. Benjamin W. Mitchell, *pro se*  
#07-A-5226  
Upstate Correctional Facility  
P.O. Box 2001  
Malone, NY 12953